THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.2690 OF 1999

DATED: 21.11.2007

Between:

A.P.S.R.T.C. rep. by its Depot Manager, Karimnagar.

.. Petitioner

And

The Presiding Officer, Labour Court, Godavarikhani and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.2690 OF 1999

ORDER:

This writ petition is directed against the order, dated 15.04.1997, passed in M.P.No.5 of 1993 on the file of the 1st respondent- Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District.

2. Petitioner is the management and 2nd respondent is the workman. It appears, the 2nd respondent-workman, while working as Conductor with the petitioner Corporation at Karimnagar Depot, was removed from service on the allegation of unauthorized absence. Thereupon, he raised a dispute in I.D.No.46 of 1981 on the file of Additional Industrial Tribunal-cum-Additional Labour Court at Hyderabad. An award was passed in the said I.D. on 28.12.1984 directing the management to reinstate the workman with continuity of service, full backwages and attendant benefits. Aggrieved by the same, management filed a writ petition before this Court, wherein, initially, the management was ordered to deposit half of the backwages awarded by the Additional Industrial Tribunal and the workman was permitted to withdraw the same. Ultimately, the said writ petition was dismissed confirming the award passed by the Additional Industrial Tribunal. Thereafter, the 2nd respondent-workman filed M.P.No.5 of 1993, under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the Act'), seeking a direction to the management to

pay an amount of Rs.1,11,692-00 ps. due to him towards past wages.

3. It was the case of the 2nd respondent-workman that the Divisional Manager, A.P.S.R.T.C. Karimnagar, through his letter dated 29.08.1985, informed him that he is ordered to be reinstated subject to the result of the writ petition to be filed by the management against the award, but no reinstatement orders were issued. He made a written representation to the Divisional Manager, A.P.S.R.T.C., Karimnagar, on 28.09.1985, stating that he was appointed as Conductor on 07.07.1967 and he was deemed to be in continuous service and, therefore, sought for posting as Assistant Depot Clerk on the basis of seniority, as his juniors were working in higher posts. But, he was not reinstated and was informed by the Divisional Manager, A.P.S.R.T.C. Karimnagar, that he sought advice of the Senior Law Officer of the Corporation, vide letters dated 24.08.1987 and 01.03.1989, and would give posting orders only after receipt of advice. Thereupon, the 2nd respondent filed W.P.No.13988 of 1985 before this Court seeking a direction to the respondents therein to consider his case for promotion to the post of Assistant Depot Clerk, and the said writ petition was disposed of on 17.04.1992 with a direction as prayed for. Therefore, he claimed wages from 17.03.1985 to 31.03.1990 amounting to Rs.1,11,692/-.

4. The petitioner-management filed a counter before the Labour Court stating that petition under Section 33-C (2) of the Act is not maintainable and the Labour Court has no jurisdiction to entertain a petition of this nature. It was further stated that the Divisional Manager, Karimnagar, after obtaining sanction, passed reinstatement orders on 29.08.1985, and consequently the workman was reinstated into

service and posted at Huzurabad Depot as Conductor, but he did not report at that Depot, and, hence, he is not entitled to make any claim as to payment of wages beyond the date of award passed by the Labour Court.

5. Before the Labour Court, on behalf of the 2nd respondent-workman, he examined himself as WW-1 and Exs.W1 to W7 were marked. On behalf of the petitioner-management, MW-1, Senior Head Clerk of Huzurabad Depot, was examined and Exs.M1 to M5 were marked.

6. The Labour Court, after detailed consideration of the entire evidence on record, came to the conclusion that though the Divisional Manager directed the Depot Manager, Huzurabad to give posting orders to the workman, he has not complied with the said direction and no posting orders were issued and, therefore, management was alone responsible for not reinstating the workman into service, in spite of the award passed by the Additional Industrial Tribunal. Further, the management has not examined the Depot Manager, Huzurabad and, thereby, utterly failed to establish its version that in spite of issuance of posting orders, the workman failed to report to duty. Having held so, the Labour Court directed the management to pay the balance of the amount due, after deducting the amount already paid from out of Rs.1,11,692/-.

7. The findings of the Labour Court may be relevant to be noted hereunder:-

> "It is also contended by the petitioner's counsel that posting order is different from appointing order and the orders issued by the Divisional Manager does not

amount to re-instatement orders. The entire thing depends upon interpretation of correspondence. Ex.M-1 is the Office Order dt.29-8-85. It is stated that he is ordered to be re-instated with APSRTC Huzurabad subject to the result of the Writ Petition. It is stated that Depot Manager, Huzurabad is advised to issue re-instatement order duly incorporating the condition thereon. The said direction has been given to the Depot Manager, Huzurabad, while marking the copy of the order to the petitioner. Ex.M-3 is the same as Ex.M-1. On 18-10-85, a letter was addressed to the Depot Manager to state as to when the conductor- petitioner join duty. Ex.M-5 is said to have been written by depot manager, Huzurabad to the depot manager, APSRTC, Karimnagar stating that he did not report for duty. Ex.W-4 is also same as M-2, Divisional Manager has ordered to re-instatement after consulting Law Officer. The divisional manager, Karimnagar has reported to the senior Law Officer on 1-3-89, stating that the petitioner failed to report at Huzurabad depot but approaching the office frequently for re-instatement orders. The divisional manager is also sought for advise from law officer, Huzurabad under ExW-6. It is clearly stated that he is frequently approaching divisional manager, Karimnagar and seeking for re-instatement order. It is clear from the posting orders given under Ex.W-4 the depot manager, Huzurabad has to issue re-instatement order incorporating the condition mentioned in Ex.W-4. In this case, depot manager, Huzurabad, did not comply the direction given by the divisional manager, Karimnagar. The fact that he was continuously going around the divisional manager's office for his re-instatement order proved and probablised by contents of Ex.W-5 and Ex.W-6. WW-1 has categorically stated on oath that he approached the depot manager Suresh for the orders and he asked him to report after receiving the orders by post. The said Suresh is not examined to contradict the version of petitioner. MW-1 has no personal knowledge

even according to MW-1 by the time he joined petitioner already filed this case. MW-1 also states that he does know if the petitioner approached the depot manager, Huzurabad or not. The respondent is unable to produce the re-instatement order which has to be issued by the depot manager, Huzurabad. This is a clear case where the depot manager, Huzurabad has not issued re-instatement orders incorporating the condition. That is the reason why I state that non-examination of depot manager, Suresh, who was the then depot manager is stated to respondent's version. Moreover, the question of reporting to Depot Manager, Huzurabad does not arise when the depot manager, Huzurabad has not issued the orders. Perhaps the depot manager, Huzurabad has failed to note the directions given to him to issue re-instatement orders. If the conduct of petitioner namely going round the Dv.M's office for posting is taking into consideration, WW-1's testimonial version of going to do Huzurabad depot and depot manager asking him to come later after receiving the order appears to be truthful. Hence, I believe the version of W-1 going to Huzurabad to report and seeking for re-instatement orders and the depot manager asking him to come later. If really the depot manager, Huzurabad has issued re-instatement orders would have seen the light of the day. The non-production of this re-instatement order only go to show that the depot manager, Huzurabad depot has not issued any such orders as per the directions of divisional manager. No such order was served on the petitioner. Hence, he is deemed to be in continuance service. This is not a case where the petitioner is at fault. This is a clear case where the respondent is at fault. In spite of going after divisional office he was not given re-instatement orders."

8. The above findings of the Labour Court would categorically establish that the 2nd respondent-workman was not given any posting

orders. Therefore, it cannot be said that petition under Section 33-C (2) of the Act is not maintainable. I am of the opinion that there is no illegality in the impugned order passed by the Labour Court, calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

9. The writ petition is, accordingly, dismissed. No costs.

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JUSTICE C.V. RAMULU

21st November, 2007.
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